

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

NOV 18 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0109
	)	DEPARTMENT B
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
RAYMOND KEITH WALKER,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20092273001

Honorable John S. Leonardo, Judge

AFFIRMED

Harriette P. Levitt

Tucson  
Attorney for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 After a jury trial, appellant Raymond Walker was convicted of aggravated driving under the influence of an intoxicant (DUI) and aggravated driving with an alcohol concentration (AC) of .08 or greater, both while his license was suspended, revoked, or in violation of a restriction. The trial court found he had two historical prior felony convictions; sentenced him to concurrent, mitigated prison terms of eight years on each conviction; and imposed various fines and other assessments. Counsel has filed a brief

pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing she has reviewed the record and “has found no arguable issues [to raise] on appeal.” Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, she has provided “a detailed factual and procedural history of the case with citations to the record” and asks this court to search the record for any reversible error. Walker has not filed a supplemental brief.

¶2 We have reviewed the record as requested and have found no error that could be characterized as fundamental and prejudicial.<sup>1</sup> See *State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005). The record contains substantial evidence supporting the findings of all the elements necessary for Walker’s convictions. See A.R.S. §§ 28-1381(A)(1),(2); 28-1383(A)(1). Specifically, the evidence established a Pima County Sheriff’s deputy found Walker either asleep or “passed out” in the driver’s seat of a vehicle that was parked on the side of the roadway, partially blocking one lane of traffic; the keys were in the ignition, the engine was off, and one directional signal was activated. Walker subsequently showed signs of being highly intoxicated, and although he was uncooperative, belligerent, and physically aggressive and resistant, a sample of his blood was obtained pursuant to a warrant. His AC was determined to be .250.

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<sup>1</sup>We note that, based on the record before us and this court’s recent decision in *State v. Rogers*, No. 2 CA-CR 2009-0277, \_\_\_ WL \_\_\_ (Ariz. Ct. App. Nov.16, 2010), it appears the trial court miscalculated the mandatory surcharge owed under A.R.S. § 16-954(C), ordering him to pay a surcharge of \$630, rather than \$675.75. But as we stated in *Rogers*, because the state did not file a cross-appeal, we will not correct this error, which inures to Walker’s benefit. *Rogers*, ¶ 9.

¶3 Additionally, Walker’s mitigated prison terms were within the applicable statutory parameters and were imposed in a lawful manner. *See* A.R.S. §§ 13-105(22)(c); 13-703(C), (J).<sup>2</sup> Therefore, finding no error warranting relief of any kind and no issue requiring further review, we affirm the convictions and the sentences imposed.

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

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<sup>2</sup>The Arizona criminal sentencing code has been renumbered, effective “from and after December 31, 2008.” *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120. For ease of reference and because no changes in the statutes are material to the issues in this case, *see id.* § 119, we refer in this decision to the current section numbers rather than those in effect at the time of Walker’s offenses.